



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

Committee Secretary
State Development, Natural Resources and Agricultural Industry Development Committee
Parliament House
George Street
Brisbane QLD 4000

By email: sdnraidc@parliament.qld.gov.au

Dear Sir/Madam

Submission on the Agriculture and Other Legislation Amendment Bill 2019

Thank you for the opportunity to provide comments on the Agriculture and Other Legislation Amendment Bill 2019 (Qld) ("**the Bill**").

About the Animal Defenders Office

The Animal Defenders Office ("**ADO**") is a nationally accredited community legal centre that specialises in animal law. The ADO is run by volunteer lawyers and law students. The ADO offers information and representation for individuals and groups wishing to protect animals. The ADO also produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.

The ADO is based in the Australian Capital Territory ("**ACT**") and is a member of Community Legal Centres Australia.

Background

The Bill is an 'omnibus' bill which, according to the Explanatory Memorandum ("**EM**"), purportedly addresses issues regarding the regulation of matters including agriculture and animal management and welfare (EM1).

The main focus of the Bill is '[u]nauthorised entry by animal activist protestors to places where animals are kept in Queensland' (EM1).

While the ADO does not in principle support the use of animals for agricultural or other commercial purposes, we acknowledge that such use is currently lawful. We have therefore considered the measures proposed in the Bill and our comments are set out in detail below.

General comments

The treatment of animals by industries that profit from their use has come under increased scrutiny in Australia in recent times. The 'social licence' of these industries to cause animals suffering in the pursuit of profit is being questioned by the general public. Industries that profit from animal use must accept this shift in community values, and become more accountable and transparent regarding their animal practices. Arguably, however, the Bill is a move in the opposite direction. It

proposes changes to criminal and civil laws that encourage secrecy and exclusion, and that stifle debate about animal welfare.

Animal industries need to recognise that animal welfare advocates are not opposed to agricultural enterprises *per se*, but rather to the unjustifiable suffering of animals caused by the enterprises.

The measures proposed in the Bill do not address this core concern of many in our society about unjustifiable animal suffering. We note, for example, that no animal welfare organisation was consulted about the proposed changes that are directed at shutting down protests about animal suffering caused by industry (EM26).

We also note that the basis for the amendments is merely hypothetical and not supported by evidence. While the main focus of the Bill is the ‘unauthorised entry by animal activist protestors to places where animals are kept’ (EM1), the only justification provided for the new measures is because ‘[s]uch protest action *may* ... have adverse economic impacts and pose risks to...animal welfare, biosecurity and food safety... For example, unauthorised entry to a place where animals are kept *could* introduce or spread an animal disease’ (EM1; emphases added).

The EM claims the amendments will not regulate ‘particular views and groups’ and that ‘the amended provisions will apply equally to all Queenslanders’ (EM1-2). This is not supported by the amendments themselves which apply explicitly to animal-related, and especially agricultural, enterprises. The amendments therefore unduly target members of the public who are concerned about animal suffering.

We also note that the Bill is based on the erroneous premise that animal-use enterprises have a right to privacy. As discussed further below, this was expressly rejected by the High Court of Australia in the case of *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd*.¹

Finally, we note that the Bill proposes substantial amendments to at least 18 different pieces of legislation for quite different purposes. As a general comment we submit that this has created an unnecessarily complex bill, and that the proposed amendments would have been better dealt with in separate bills.

Comments on particular amendments

The Bill Clause (section/Act)	ADO Comments
Part 2 Amendment of Animal Care and Protection Act 2001	
4 & 5 Section 17 (ACP Act)	<ul style="list-style-type: none"> We support the proposed amendments to sections 17 and 18 of the <i>Animal Care and Protection Act 2001</i> (Qld) (“ACP Act”) but submit that they do not go far enough. The amendments acknowledge that ‘animals can quickly begin to suffer in the heat when confined without shade, air movement and access to cool drinking water’ (EM2). The amendments to sections 17 and 18 of the ACP Act are, however, inexplicably restricted to animals in vehicles. We submit that the amendments criminalising the causing of heat stress in animals should apply to all confined animals, especially farmed animals confined in paddocks, feedlots or saleyards without shade.
8	<ul style="list-style-type: none"> We support the proposed amendment to section 122 of the ACP Act, but submit it does not go far enough.

¹ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

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Section 122 (ACP Act)	<ul style="list-style-type: none"> • The amendment would expand the situations in which inspectors can enter premises without a warrant, to include where inspectors need to attend to abandoned animals. • We submit that the Bill should provide inspectors with the power to enter commercial premises without a warrant given the extraordinarily high number of animals kept in agricultural and commercial premises. • We note that animal welfare inspectors in NSW and the ACT already have such a power: <ul style="list-style-type: none"> ○ <i>Prevention of Cruelty to Animals Act 1979</i> (NSW) s24E(1) or s24G: powers of inspectors in relation to land used for certain commercial purposes ○ <i>Animal Welfare Act 1992</i> (ACT), s81(2)(b): power to enter business premises during business hours at the premises. • The EM states that the amendment ‘is justified to avert the need to allow an animal’s welfare to deteriorate to the point where it would be at imminent risk of death or injury before the inspector could take reasonable actions to prevent the animal from suffering’ (EM13). • We submit that the same justification could be used to extend the power to enter without a warrant into agricultural and other commercial premises where animals are kept.
9 Section 125 (ACP Act)	<ul style="list-style-type: none"> • We submit that requiring that attempts to contact the owner or occupier be made ‘over a period of at least 2 days’ is too long and would defeat the purpose of the amendment, namely, to rescue animals at risk because they have been abandoned.
16 Section 215D (ACP Act)	<ul style="list-style-type: none"> • This amendment would require the sharing of motor vehicle registry information about a vehicle that is suspected of having been used in the commission of an animal welfare offence. • We support this proposed amendment, especially if used in relation to vehicles that transport livestock, including ‘poultry’ birds of all ages.
18 Section 92 (ACP Act)	<ul style="list-style-type: none"> • We do not support the proposal to remove the prohibition on the use of an animal for what amounts to cosmetic testing, from 1 July 2020. We submit that it should be left in the legislation.
Part 3 Amendment of Animal Management (Cats and Dogs) Act 2008	
21 Section 43ZF (AMCD Act)	<ul style="list-style-type: none"> • We support the proposed amendment to the <i>Animal Management (Cats and Dogs) Act 2008</i> (“AMCD Act”) to require those supplying a dog to give the person receiving the dog a completed and signed transfer of ownership form. • However, we submit that the amendment should also apply to the transfer of ownership of cats. We note the EM refers to cats in connection with this amendment (EM19, 20). It is not clear, however, why the amendment itself is explicitly limited to dogs.
Part 4 Amendment of Biosecurity Act 2014	
29 Section 23 (Biosecurity Act)	<ul style="list-style-type: none"> • This proposed change would amend the <i>Biosecurity Act 2014</i> to require that a person entering, being present at or leaving a place where biosecurity matter or a carrier is present has a biosecurity obligation (EM33). • The EM states that the: <ul style="list-style-type: none"> general biosecurity obligation and the new requirement for compliance with a biosecurity management plan applies equally to all persons... For example, these provisions apply to all

The Bill Clause (section/Act)	ADO Comments
	<p>workers entering an animal holding facility for which there is a biosecurity management plan (EM18).</p> <ul style="list-style-type: none"> The ADO would support this proposed amendment only on the grounds that it not only applies 'equally to all persons', but is also enforced equally against all persons. This is because in our view the greater vulnerability for biosecurity risks arises from the activities of animal enterprises themselves and not the actions of animal activists. By way of example, past swine flu outbreaks in NSW and Queensland were reported as being transmitted by human workers at both sites.² The economic impact of these types of outbreaks is arguably far greater than the putative impact of animal activists, given the extensive operations and number of workers involved in animal enterprises across Queensland.
30 <i>Section 46A</i> (<i>Biosecurity Act</i>)	<ul style="list-style-type: none"> This proposed change would amend section 46A of the Biosecurity Act to allow poison baits containing prohibited feed for pigs and poultry to be fed to pigs for the purpose of 'pest control'. We do not support this proposed amendment. The use of poison on any animal is unjustifiable given the serious animal welfare consequences. This is acknowledged by the general prohibition against poisoning animals in s36 of the ACP Act: A person must not, with the intention of injuring or killing an animal, administer to, or feed, the animal a substance the person knows is harmful or poisonous to the animal.
Part 5 Amendment of Biosecurity Regulation 2016	
49 <i>Ch 5, Part 13</i> (<i>Biosecurity Reg</i>)	<ul style="list-style-type: none"> This proposed amendment would introduce new Part 13 of the <i>Biosecurity Regulation 2016</i> ("Biosecurity Reg"). The amendment would require that a person must comply with the Part in order to comply with their general biosecurity obligation. New section 94G would provide that a biosecurity management plan must be available for inspection on request during ordinary business hours at the place. We submit that in the interests of transparency and accountability, biosecurity plans should be available online. New section 94H would require a person entering, present at or leaving a management area that is the subject of a biosecurity management plan, to comply with the plan. Under proposed paragraph 94H(2)(c), the requirement would not apply to a person who 'is required or permitted under an Act to enter the management area'. However, neither the Bill nor the EM provides an example to illustrate to whom this exemption would apply. We submit that this makes it difficult (if not impossible) to assess.
Part 8 Amendment of Exhibited Animals Act 2015	
78 <i>Section 22A</i> (<i>EA Act</i>)	<ul style="list-style-type: none"> This amendment would insert new section 22A into the <i>Exhibited Animals Act 2015</i> ("EA Act"). The new section would require that a 'relevant person' (eg a protestor) must take care not to 'cause or increase' a 'risk associated with exhibiting or dealing with the exhibited animal' when another person responsible for the animal is present. It would also require that the person (protestor) must comply with instructions from the person who is responsible for an exhibited animal to enable the latter person to manage an alleged animal welfare (or other) risk.

² Jonathon Dart, 'Piggery shut due to swine flu outbreak', *Sydney Morning Herald*, 1 August 2009 and Jessica Marszalek, 'Tests confirm swine flu at Qld piggery', *The Age*, 26 August 2009.

The Bill Clause (section/Act)	ADO Comments
	<ul style="list-style-type: none"> • We do not support this (overly complex and cumbersome) amendment for the following reasons. • We reject the premise on which the amendment is based. It presumes that a person who may be protesting about the use of animals for exhibition purposes would cause greater suffering than the actual use of the animals. This is clearly nonsensical. • The EM states that ‘The requirement to comply with instructions is justified because the responsible person is in a unique position to know the relevant risks that may be posed or exacerbated by the person’s activities’ (EM16). • We reject this justification due to the inherent conflict of interest in having a person associated with the keeping of an animal for commercial gain responsible for giving instructions to others about the animal’s welfare. • For example, in most cases the responsible person would have a financial interest in keeping exotic (wild) animals for circuses or livestock for rodeos, both of which have very serious animal welfare consequences as evidenced by the fact that rodeos and wild-animal circuses are prohibited on animal welfare grounds in the ACT.³ • The EM concedes that this amendment ‘may be seen to regulate persons’ freedom of expression (acts or omissions) where an exhibited animal is being exhibited’ (EM19). However, it states that the amendment is ‘justified by the potential consequences of creating or increasing an animal welfare... risk’ (EM19). • We reject this purported justification on the grounds that is not supported by any evidence of ‘animal welfare risks’ that would be posed by a person protesting against the keeping of animals for exhibition purposes. • Moreover, if the actions of a protestor did cause an animal to suffer, there are provisions under the ACP Act that would apply to the conduct. • We also submit that this amendment impacts on the implied freedom of communication about political matters, because the proposed offences under the EA Act could limit public debate about animal welfare and, in particular, the welfare of animals kept for exhibition purposes. In the case of <i>Lenah Game Meats</i>⁴, the High Court of Australia stated that: <ul style="list-style-type: none"> ...concerns about animal welfare are clearly legitimate matters of public debate across the nation. ... Many advances in animal welfare have occurred only because of public debate and political pressure from special interest groups. The activities of such groups have sometimes pricked the conscience of human beings. Parliamentary democracies, such as Australia, operate effectively when they are stimulated by debate promoted by community groups. To be successful, such debate often requires media attention. Improvements in the condition of circus animals, in the transport of live sheep for export and in the condition of battery hens followed such community debate. Furthermore, antivivisection and vegetarian groups are entitled, in our representative democracy, to promote their causes...⁵ • The proposed maximum penalty for the amendment is 100 penalty units. We submit that the proposed penalty is disproportionate to the level of purported criminality reflected in the targeted activity. The EM states that the ‘penalty is justified because of the potential for significant animal welfare ... consequences that can result from non-compliance’ (EM21). Yet the EM fails to explain what the alleged animal welfare consequences would be if the proposed new offence in either s22A or s188C of the EA Act is not complied with.

³ *Animal Welfare Act 1992* (ACT), section 18(1) and Part 5.

⁴ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

⁵ *Ibid* 217-218; emphasis added.

The Bill Clause (section/Act)	ADO Comments
Part 18 Amendment of Summary Offences Act 2005	
132 Section 10A (SO Act)	<ul style="list-style-type: none"> • This amendment expands the scope of the existing ‘unlawful assembly’ offence in s10A of the <i>Summary Offences Act 2005</i> (“SO Act”). It would amend s10A to ‘make a gathering of three or more persons unlawful if the gathering is on land used for a range of purposes related to animal keeping and other agriculture [sic] and there is ... a risk to animal welfare...’ (EM6). • We would support this amendment only if it would also be enforced in situations where co-located workers, or other persons with an economic interest in the keeping of animals, constitute a risk to animal welfare by their activities. These could include, for example, carrying out surgical procedures without pain relief, or keeping aquatic or land species confined in small cages or areas, or using animals in circus performances, or confining animals in saleyards in hot temperatures and without shade. We submit that, <i>prima facie</i>, the amendment would apply in these situations and that, if passed, it should be enforced whenever there is a risk to animal welfare due to the keeping of animals for commercial purposes. • We submit that the amendment to s10A of the SO Act limits freedom of movement and association. The EM states that the ‘impact on the right to assembly is justified by the need to balance this right against the rights of persons who work and live on the land’ (EM17). We submit that this attempted justification should be rejected because the EM does not state what those rights are or how they are different from the rights of persons who work and live on other types of land and whose rights are therefore not protected by the proposed amendment. This aspect of the amendment emphasises the selective nature of the proposed offences, developed in a knee-jerk fashion to recent high-profile incidents. • The EM also states that this amendment is ‘reasonable, necessary and proportionate to the objective of protecting the public interest in ... animal welfare...’ (EM17). We submit, however, that the amendment does nothing to protect the public interest in animal welfare, and does everything to aid the concealment of ongoing animal suffering on agricultural land or in other commercial premises. We submit that the public interest would be better served by measures (legislative or otherwise) requiring greater transparency in animal industries, including the establishment of an independent office of animal welfare. This would reduce the perceived need for independent policing by concerned members of the public. • The EM states that it is ‘arguable that if there is a reasonable risk of economic loss or a risk to the safety of any person, food safety, animal welfare, or a biosecurity risk, then the assembly is not peaceful’ (EM17). As this contentious assertion is not supported by any evidence or explanation, we submit that it should be rejected. • The EM states that the amendments to sections 10A and 13 are justified because they are ‘in the broader public interest’ (EM18). We submit that this justification could also be used to stop animal husbandry practices that the general community rejects such as mulesing, battery cages, macerating day-old male chicks etc, and that the Bill should deal with these practices that are known to cause animal suffering, rather than hypothetical sources of distress by occasional protestors.
133 Section 13 (SO Act)	<ul style="list-style-type: none"> • This amendment replaces the existing offence of unlawfully entering farming land with a new offence covering a wider range of lands used for animal industries and enterprises. • We do not support this amendment because it does not address the fear and distress of animals caused by their routine confinement and slaughter. We submit that these are the

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	<p>issues that the amendment should address, and that instead the amendment would make it easier to conceal mistreatment or illegal conduct by animal industries.</p> <ul style="list-style-type: none"> • We also submit that the amendment to s13 of the SO Act should be rejected on the grounds that it is an attempt to introduce a 'right to privacy' for corporations. The EM states that the amendment: <ul style="list-style-type: none"> is justified by community expectations that persons should enjoy privacy in their use of land for agricultural and similar purposes ... The amendment is further justified in the respect that it serves to promote the privacy rights of land owners who are the subject of an unlawful entry. (EM17) • We reject this contention. In the case of <i>Lenah Game Meats</i>,⁶ the High Court of Australia reaffirmed that there is no general right to privacy in Australia, and that even if such a right were to be developed in the future, it would not apply to a corporation, and such organisations should not expect this kind of remedy to protect their commercial interests. • Finally, we submit that the proposed offences are unnecessary in that criminal laws and other measures already exist to cover the field of alleged criminal behaviour which the Bill is attempting to address. In addition to the existing offences that criminalise trespass and property damage, police have broad powers to interfere with protest activities by utilising search and seizure powers without warrant, and other legal measures are available such as apprehended violence orders, injunctions, torts and other civil law remedies.

Conclusion

In conclusion, the ADO submits that Queensland needs more open doors to its farms and other animal industries, rather than devising new ways to prevent public scrutiny of these enterprises.

We suggest that the provisions targeting animal activists be removed from the Bill, and that non-legislative measures encouraging greater transparency and accountability by animal industries be developed and implemented.

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The Animal Defenders Office acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

5 September 2019

⁶ *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.